

requirements. Additionally, the Associations believe that internship and training programs are a solid way of promoting minority interest and involvement in the broadcast industry. The Associations propose that the FCC make it possible for all participating broadcasters to opt out of the FCC record keeping requirements by their participation in internship and training programs which offer tangible, real world benefits to minorities and women.

Respectfully submitted,

NORTH CAROLINA AND VIRGINIA  
ASSOCIATIONS OF BROADCASTERS

By

  
Wade H. Hargrove

By

  
Mark J. Prick

By

  
Marcus W. Trathen

By

  
Winston P. Lloyd

Counsel to the North Carolina and  
Virginia Associations of Broadcasters

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.  
Suite 1600  
First Union Capitol Center  
Post Office Box 1800  
Raleigh, North Carolina 27602  
(919) 839-0300  
October 25, 1996

**EXHIBIT A****SUMMARY OF THE COMMENTS****A. CBS, Inc.**

CBS, Inc. ("CBS") filed comments supportive of aggressive modifications of the FCC's EEO Rule. In particular, CBS notes the anomaly created by the current rules under which a broadcaster who meets or exceeds the FCC's EEO processing guide lines can nonetheless be found to be in violation of the FCC's rules because of its failure to follow government-approved recruitment procedures or because it has not kept the paperwork deemed sufficient by the Commission to document compliance.<sup>1</sup> To remedy this anomaly, CBS recommends that the Commission clarify that broadcasters who comply with the FCC's statistical processing guidelines for at least 75% of their license term would be presumed to be in compliance with the FCC's EEO Rule and would not be subject to fines or short term renewals for failing to document the procedural aspects of its program. CBS also points out that the FCC's proposed forfeiture guidelines fail to give an adequate consideration to the circumstances of the licensees operating in markets with small minority populations.<sup>2</sup> As applied to such stations, the 66% and 33% applicant pool requirements are arbitrary and unreasonable yardsticks for judging EEO performance.<sup>3</sup> To solve this problem, CBS proposes that licensees in areas with small minority populations be exempt from the applicant pool requirements of the proposed forfeiture guidelines.<sup>4</sup> In addition, CBS advocates the application of

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<sup>1</sup> CBS, Inc. Comments at 2.

<sup>2</sup> *Id.* at 15.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 11-12.

an expanded, and more liberal, test for the utilization of alternative labor force data.<sup>5</sup> CBS points out that, in some circumstances, a broadcaster may draw on a labor pool from an area which is outside the relevant MSA and that, in such circumstances, the broadcaster should have the opportunity to demonstrate that its EEO performance should be evaluated and measured against a labor force which includes an area outside the MSA.<sup>6</sup>

Finally, CBS points out that the FCC can implement much of this plan within the restrictions of Section 22(f) of the 1992 Cable Act because enforcement of its rules is within the discretion of the FCC. CBS states that while the codification of the EEO Rule is locked into place by the 1992 Cable Act for television stations, the manner of enforcement of the rules is a matter within the FCC's discretion.<sup>7</sup>

B. NAB

The National Association of Broadcasters ("NAB") also supports broad revision of the EEO Rule. In general, NAB criticizes the current efforts-based system for relegating actual EEO results to a secondary consideration. NAB makes salient points regarding real-world problems created by the EEO Rule such as resulting in needless delay in the employment process<sup>8</sup> and the inability to gather EEO data from some job applicants.<sup>9</sup> To address these problems, NAB supports raising the threshold for reporting requirements. Under NAB's proposal, only stations with 20 or more

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<sup>5</sup> *Id.* at 18-22.

<sup>6</sup> *Id.* at 21.

<sup>7</sup> *Id.* at 17.

<sup>8</sup> NAB at 12.

<sup>9</sup> *Id.* at 13.

employees<sup>10</sup> or in areas with an available minority labor force of at least ten percent would be subject to the FCC's current record keeping requirements. In order to evaluate a station's compliance with the EEO Rule, NAB urges the Commission adopt a performance-based test utilizing a sliding scale test. The better the station's performance vis-a-vis its labor force, the less that should be required of the station to pass EEO muster in response to a Petition to Deny.<sup>12</sup>

In addition, NAB notes that broadcasters should be given EEO credit for their participation in joint recruitment activities such as job fairs and employment clearinghouses.<sup>13</sup> NAB also advocates more liberal use of alternative labor pool information.<sup>14</sup> NAB recommends that stations, at their option, be allowed to use data from the county or counties that comprise their primary coverage area in assessing their EEO programs.<sup>15</sup> Further, NAB recommends that the FCC not scrutinize the EEO efforts of small market broadcasters; i.e., those outside MSAs or inside MSAs of 100,000 persons or less, who have no history of past discrimination.<sup>16</sup> Finally, NAB recommends that the Commission reexamine its EEO regime in light of the Supreme Court's decision in *Adarand* and the Fifth Circuit's recent decision in *Hopwood v. Texas*.<sup>17</sup>

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<sup>10</sup> *Id.* at 23.

<sup>11</sup> *Id.* at 16.

<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Id.* at 17.

<sup>14</sup> *Id.* at 17.

<sup>15</sup> *Id.* at 19.

<sup>16</sup> *Id.* at 24.

<sup>17</sup> *Id.* at 4.

C. The American Federation of Television and Radio Artists

The American Federation of Television and Radio Artists ("AFTRA") generally supports the existing EEO Rule. While AFTRA does not oppose clarification to the present rule in order to provide more predictability and certainty in its enforcement, AFTRA does not support any relaxation of the Commission's existing record keeping requirements.<sup>18</sup>

D. Joint Comments of Named State Broadcaster Associations

In their Joint Comments of Named State Broadcaster Associations (the "Named Associations"),<sup>19</sup> the Named Associations advocate relaxation of the current EEO Rule. In general, the Named Associations urge the Commission to relax the current paperwork and administrative burdens created by the EEO Rule. They point out that the current record keeping and administrative requirements apply to all stations regardless of whether a licensee is already employing minorities and women at a level equal to their presence in the labor force and without any showing that a licensee's applicant pools have been artificially limited in the past.<sup>20</sup> To address this problem, the Named Associations propose exempting all stations with less than 20 full-time employees from the administrative and paperwork requirements.<sup>21</sup> In addition, the Named Associations recommend that

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<sup>18</sup> AFTRA Comments at 2.

<sup>19</sup> The twenty-six signatory associations include the broadcast associations of the following states: Alabama, Arizona, Connecticut, Georgia, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland/DC/Delaware, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Washington State, West Virginia, and Wisconsin.

<sup>20</sup> Named Associations Joint Comments at 4-5.

<sup>21</sup> *Id.* at 7.

all licensees that are in compliance with the FCC's "parity processing guidelines" should be exempt from the administrative and paperwork requirements.<sup>22</sup> In addition, the Named Associations urge the Commission to relax its current test for the application of alternative labor force data.<sup>23</sup> They also advocate giving credit to broadcasters for participation in joint recruitment efforts.<sup>24</sup> Finally, the named Associations argue that the proposed forfeiture policy is arbitrary and capricious and should be rejected.<sup>25</sup>

E. Montana Broadcaster's Association

The Montana Broadcaster's Association, in conjunction with certain unnamed broadcast clients of Haley Bader & Potts, P.L.C. ("Montana Broadcaster's Association") filed comments emphasizing the controlling nature of *Adarand* and asserting that a strict standard of review applies to the Commission's EEO program, because it is "a compulsory, not a voluntary program, which is designed to, and in practice does, affect hiring decisions."<sup>26</sup> Applying the strict standard, the Montana Broadcaster's Association concludes that the program fails strict scrutiny and that the Commission's alleged goal in achieving program diversity is a mere sham because the Commission has never excused a station from recruitment obligations because it has achieved a sufficient degree of diversity.<sup>27</sup> Further, the Montana Broadcaster's Association notes that the Commission's

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<sup>22</sup> *Id.* at 10.

<sup>23</sup> *Id.* at 11.

<sup>24</sup> *Id.* at 12.

<sup>25</sup> *Id.* at 14-21.

<sup>26</sup> Montana Broadcaster's Association Comments at Summary.

<sup>27</sup> *Id.* at 15.

forfeitures are totally unrelated to the stated goal of achieving diversity.<sup>28</sup> The Montana Broadcaster's Association recommends that the EEO Rule be limited to punishing licensees found to have engaged in discriminatory conduct.<sup>29</sup> Additionally, the Montana Broadcaster's Association recommends that stations with at least 10 or fewer employees be exempted from the Commission's record keeping requirements, while noting that broadcasters it had surveyed recommended raising the threshold from 20 to 50 employees.<sup>30</sup>

The Montana Broadcaster's Association recommends simplifying the reporting process to require only the first page of Forms 395-B and 395-A and the first two pages of Form 396 for the exempted stations. This simplification would result in as much as a 50-75% reduction in time spent keeping records.<sup>31</sup>

The Montana Broadcaster's Association also recommends that stations obtaining a certain benchmark percentage of minorities be exempt from job-by-job record keeping, stating that such benchmark would reduce a station's administration burden by 50 to 80 percent.<sup>32</sup> The Montana Broadcaster's Association recommends giving credit to stations for using centralized recruiting sources and hiring minorities to internships.<sup>33</sup> However, the Montana Broadcaster's Association expresses concern that requiring participation in four recruitment events may be too great a burden

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<sup>28</sup> *Id.* at 21.

<sup>29</sup> *Id.* at 24.

<sup>30</sup> *Id.* at 29.

<sup>31</sup> *Id.* at 30.

<sup>32</sup> *Id.* at 31.

<sup>33</sup> *Id.* at 32.

for smaller stations in smaller markets.<sup>34</sup> Also, the Montana Broadcaster's Association proposes that an alternative labor force test should use the principal community contour of the station in determining percentages of minorities in the station's labor force when that contour does not cover significant minority populations in the MSA.<sup>35</sup> Many of the Montana Broadcaster's Association's recommendations are based on the views of broadcasters as recorded in a survey it conducted, which received responses from 41 radio and television stations representing a cross section of the country.<sup>36</sup>

F. Texas Association of Broadcasters

The Texas Association of Broadcasters ("TAB") filed comments encouraging the Commission to give serious consideration to reducing or eliminating its role in EEO enforcement. Additionally, TAB suggests specific changes to be made to the current system and, like many other commenters, recommends greater reform than proposed by the Commission. Most important to TAB is the recommendation that stations reporting 50 percent or more parity be deemed to be in compliance with the EEO Rule absent a *prima facie* showing of discrimination or a challenge to the accuracy of its reported numbers.<sup>37</sup> Stations reaching parity would be exempt from record keeping and formal recruiting requirements until the next license renewal.<sup>38</sup> Additionally, TAB recommends

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<sup>34</sup> *Id.* at 31.

<sup>35</sup> *Id.* at 32.

<sup>36</sup> *Id.* at 28.

<sup>37</sup> TAB Comments at 3.

<sup>38</sup> *Id.*



that the FCC eliminate its current "guilty until proven innocent" standard in the event of a renewal challenge on the basis of an alleged EEO violation.<sup>39</sup>

Rather than using the MSA minority labor force as a basis for determining compliance, TAB urges the use of each station's principal community contour.<sup>40</sup> Also, TAB argues that stations should receive credit for using a central recruitment source, participating in job fairs (although four is excessive), and hiring part-time employees and interns.<sup>41</sup> TAB recommends elimination of record keeping requirements for positions filled by promotions from within the company.<sup>42</sup>

TAB recommends using staff size as a qualifying factor for exemption from record keeping requirements. Specifically, TAB suggests that stations of 15 or fewer employees should qualify for exemption, noting that nearly all television and most radio stations would not be exempt.<sup>43</sup>

Further, in considering the size of the local minority labor force, TAB urges the FCC to consider only those minorities with the required and necessary skills for the job(s) in question.<sup>44</sup> Also, TAB advocates the use of a warning for a first offense, instead of automatic imposition of a forfeiture for EEO Rule violations.<sup>45</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Id.* at 5-6.

<sup>42</sup> *Id.* at 7.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 11.

<sup>45</sup> *Id.* at 12.

G. EZ Communications, Inc.

An owner of 20 radio broadcast stations in eight markets, EZ Communications, Inc. ("EZ") filed comments supporting the Commission's streamlining efforts. While approving the FCC's proposals regarding the use of outside, centralized recruiting sources, EZ suggests that stations receive credit for employing minorities and women in part-time positions and internships because the changing nature of the economy relies more on these types of jobs.<sup>46</sup>

H. KRKT(AM) and KRKT-FM, Albany, Oregon<sup>47</sup>

Radio stations KRKT(AM) and KRKT-FM, Albany, Oregon, ("KRKT") filed comments supportive of allowing the use of centralized job "banking" such as that found in state broadcaster's associations to fulfill the requirements of the EEO Rule, especially where the station has had no success with normal recruiting channels such as local papers and college employment centers. Since some stations in rural areas with very low minority populations simply have no success in recruiting minorities, KRKT urges credit for using centralized job "banking" to relieve broadcasters of "going through the motions" when such effort yields absolutely no results.

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<sup>46</sup> EZ Communications, Inc. (EZ) Comments at 3.

<sup>47</sup> The total commenters filing comments in support of the EEO Rule (hereinafter "MMTC Comments" or "MMTC") include the following: Minority Media and Telecommunications Council, Office of Communication of the United Church of Christ, National Council of Churches, American Civil Liberties Union, American Hispanic Owned Radio Association, Association of Black Owned Television Stations, Black Citizens for a Fair Media, Black College Communications Association, Chinese for Affirmative Action, Cultural Environment Movement, Fairness and Accuracy in Reporting, Hispanic Association on Corporate Responsibility, League of United Latin American Citizens, Minority Business Enterprise Legal Defense and Education Fund, Inc., National Association for the Advancement of Colored People, National Association of Black Owned Broadcasters, National Bar Association, National Hispanic Media Coalition, National Rainbow Coalition, National Urban League, Operation PUSH, and Women's Institute for Freedom of the Press.

I. California Broadcasters Association, Minnesota Broadcasters Association,  
Missouri Broadcasters Association and North Dakota Broadcasters Association

The California Broadcasters Association, Minnesota Broadcasters Association, and Missouri Broadcasters Association and North Dakota Broadcasters Association (the "California-Minnesota-Missouri-North Dakota Associations"), filed joint comments advocating substantial changes to the FCC's EEO Rule. The California-Minnesota-Missouri-North Dakota Associations asserts that minorities are generally less educated than others and therefore recruiting them for the "upper four" positions is often very difficult.<sup>48</sup> Therefore, they suggest that the Commission consider the number of *qualified* minorities in the MSA rather than the total number of minorities.<sup>49</sup> Thus, the Commission should "permit broadcasters to make a showing that their EEO recruitment efforts were sufficient in light of the percentage of qualified minorities within the relevant minority labor pool."<sup>50</sup> The California-Minnesota-Missouri-North Dakota Associations also recommend relief for "fringe" and small town stations whose broadcast areas do not encompass an entire MSA. In such a case it is more difficult to recruit minorities who may live in the interior of the MSA and are often unwilling or unable to commute or relocate to the small or fringe market station.<sup>51</sup> Further, they argue that the EEO recruiting and record keeping requirements are even more of a burden for small stations that have high turnover.<sup>52</sup> The California-Minnesota-Missouri-North Dakota Associations suggest that

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<sup>48</sup> California - Minnesota - Missouri - North Dakota Broadcasters Associations Comments at 2-3, 3 n. 7.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 5.

<sup>51</sup> *Id.* at 6-7.

<sup>52</sup> *Id.* at 7.

the Commission give relief from recruitment requirements for stations with (1) 20 or fewer employees and (2) whose number of hiring opportunities exceeds the mean for stations beyond the top 100 markets by 10 percent.<sup>53</sup> Alternatively, they suggest that broadcasters with 20 or fewer employees be exempt from the Commission's eventual EEO requirements.<sup>54</sup> With such an exemption, the EEO Rule would still cover 72.3% of employees at broadcast stations.<sup>55</sup>

J. Walker County Communications, Inc.

Walker County Communications, Inc., the licensee of radio stations KSAM(AM) and KSAM-FM Walker County, ("Walker County"), filed comments urging the FCC to more substantially streamline the EEO Rule than it has proposed. Arguing that the FCC's EEO Rule amounts to a quota system and that the FCC offers no race-neutral purpose for its rule, Walker County asserts that the rule cannot stand up to strict scrutiny and is therefore unconstitutional under *Adarand*.<sup>56</sup>

Failing a complete overhaul of the current system, Walker County offers suggestions for reducing the current burdens on broadcasters. Walker County recommends that the Commission exempt all stations of 20 or fewer employees from the paperwork requirements of the EEO Rule.<sup>57</sup> Further, Walker County asserts that small market stations should be exempted from the EEO Rule

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<sup>53</sup> *Id.* at 8.

<sup>54</sup> *Id.* at 9.

<sup>55</sup> *Id.*

<sup>56</sup> Walker County Communications, Inc. Comments at 3.

<sup>57</sup> *Id.* at 4.

because of the competition for employees with larger market stations.<sup>58</sup> Filing requirements for these exempt stations would be limited in the same way as recommended by Montana Broadcaster's Association.<sup>59</sup> Prospective record keeping would be required for stations against whom a *prima facie* showing of failure to follow an EEO policy is presented.<sup>60</sup>

Walker County also recommends exemption from record keeping for stations satisfying the current processing guidelines. These stations should be found in presumptive compliance with the EEO Rule in the absence of evidence of meritorious discrimination complaints.<sup>61</sup> In addition, smaller stations should receive credit for recruiting minority and female part-time employees, because that may be the bulk of available positions, and because it is an excellent "stepping stone" into the industry.<sup>62</sup>

Walker County asserts that forfeitures are excessive, especially for small market stations, and the fines result in forcing many small operators to reduce staff, thereby crippling their ability to invest in the very employment programs the Commission seeks to encourage.<sup>63</sup> Thus, Walker County urged the Commission to make staff size an *integral* factor in its analysis. Further, Walker

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 5.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 5-6.

<sup>62</sup> *Id.* at 6.

<sup>63</sup> *Id.* at 8-9.

County suggests that positions only be required to remain open while trying to find an adequate pool for a limited amount of time, regardless of whether an adequate pool is ever found.<sup>64</sup>

K. Minority Media and Telecommunications Council et al.<sup>65</sup>

MMTC and the parties joining in its comments generally support the FCC's EEO Rule in its present form, and oppose this rule making proceeding, stating that the proposed Rule Making shows that the Commission has a mere "wavering commitment to EEO." MMTC says "adoption of [the FCC's] proposals would be morally wrong, unlawful and unwise."<sup>66</sup> Specifically, MMTC argues that the current rules are necessary to "promote diversity, ensure public service by licensees of good character, and remedy the effects of past discrimination."<sup>67</sup> Essentially, MMTC and the broadcast industry agree on the goals of eliminating discrimination (despite MMTC's statement that commenting broadcasters are "anti-EEO") but the parties disagree on the method.

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<sup>64</sup> Id. at 9-10.

<sup>65</sup> The total commenters filing comments in support of the EEO Rule (hereinafter "MMTC Commenters" or "MMTC") include the following: Minority Media and Telecommunications Council, Office of Communication of the United Church of Christ, National Council of Churches, American Civil Liberties Union, American Hispanic Owned Radio Association, Association of Black Owned Television Stations, Black Citizens for a Fair Media, Black College Communications Association, Chinese for Affirmative Action, Cultural Environment Movement, Fairness and Accuracy in Reporting, Hispanic Association on Corporate Responsibility, League of United Latin American Citizens, Minority Business Enterprise Legal Defense and Education Fund, Inc., National Association for the Advancement of Colored People, National Association of Black Owned Broadcasters, National Bar Association, National Hispanic Media Coalition, National Rainbow Coalition, National Urban League, Operation PUSH, and Women's Institute for Freedom of the Press.

<sup>66</sup> MMTC Comments at 1.

<sup>67</sup> Id. at 16.

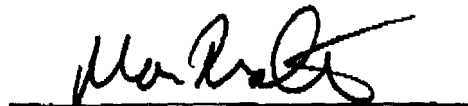
MMTC argues that the record keeping and reporting requirements are not a burden on broadcasters, and whatever burden they may be, they are necessary to prevent broadcasters from discriminating. MMTC specifically rejects the proposal for expanded exemptions by staff or market size, argues (without evidence) that institutional discrimination exists in the broadcast industry, and suggests a number of changes to the current rules which are aimed at toughening standards or increasing paperwork requirements.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true copies of the foregoing **JOINT COMMENTS OF THE NORTH CAROLINA AND VIRGINIA ASSOCIATION OF BROADCASTERS** were sent this 25<sup>th</sup> day of October, 1996, by first-class United States mail, postage prepaid, to the following:

Roy Stewart, Esq.  
Chief, Mass Media Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 314  
Washington, D.C. 20554

Paulette Laden, Esq.  
Chief, EEO Branch  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 7218  
Washington, D.C. 20554

A handwritten signature in black ink, appearing to read "Mark R. Brooks", is written over a horizontal line.